

1 WILLIAM G. MONTGOMERY
MARICOPA COUNTY ATTORNEY

2 By: Peter Muthig
3 Deputy County Attorney
State Bar No. 018526
4 MCAO Firm No. 00032000
E-mail: muthigk@mcao.maricopa.gov

5 CIVIL SERVICES DIVISION
Security Center Building
6 222 North Central Avenue, Suite 1100
Phoenix, Arizona 85004-2206
7 Telephone (602) 506-1735

8 *Attorneys for Maricopa County Treasurer*

9 **UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

10 In Re:

11 Ditech Holding Corporation, et al.,
12 Debtors.

Chapter 11

Case No. 19-10412-JLG

(Jointly Administered)

Hearing Date: June 20, 2019
Hearing Time: 11:00 a.m. (ET)

Objection Date: June 10, 2019
Objection Time: 4:00 p.m. (ET)

[Relates to Docket No. 542]

13
14
15
16
17 **MARICOPA COUNTY TREASURER'S OBJECTION TO (I) AMENDED JOINT
CHAPTER 11 PLAN OF DITECH HOLDING CORPORATION AND ITS AFFILIATED
18 DEBTORS, AND (II) SALE OF PROPERTY**

19 Maricopa County Treasurer ("MCT"), a secured tax lien creditor, by and through
20 its undersigned counsel, hereby objects to the *Amended Joint Chapter 11 Plan of*
21 *Ditech Holding Corporation and Its Affiliated Debtors* (the "Plan") (DE 542), and to the
22 sale of any property in Maricopa County. MCT objects to the Plan because (i) it is
23 unclear regarding the accrual of interest on the MCT Claims (defined below), (ii) it fails
24 to provide for retention of the MCT tax liens until the taxes and interest are paid in full,

1 and (iii) fails to provide for payment of the MCT Claims and any post-petition statutory
2 interest first from the sale proceeds in the event the Debtors sell or transfer the assets
3 located in Maricopa County, Arizona.

4 **MCT's Claims:**

5 On March 8, 2019, MCT filed three (3) secured proofs of claims: Claim #20097 in
6 the amount of \$36,658.92; Claim #20098 in the amount of \$56,006.84, and Claim
7 #20099 in the amount of \$2,317.73 (collectively, the "MCT Claims"). All taxes bear
8 interest from the time of delinquency at the statutory rate of 16% per year simple until
9 paid in full. See 11 U.S.C. § 511 and A.R.S. §§ 42-18053 and 42-18153.

10 **The Tax Liens:**

11 Arizona law provides the following.

- 12 a. The tax liens attached on January 1 of the respective tax years and the taxes
13 are not discharged until the taxes are paid in full or title to the property vests
14 in a purchaser of the property for taxes. A.R.S. §§ 42-17153 and 42-19106.
- 15 b. The tax liens are prior and superior to any other liens of every kind and
16 description regardless of when another lien attached. A.R.S. §§ 42-17153 and
17 42-19106. Therefore, any tax liens held by Maricopa County should remain in
18 a first priority position.
- 19 c. "If the tax has not been paid on property sold at judicial sale, or sold by an
20 executor, administrator, guardian or trustee, the person making the sale shall
21 pay the taxes, penalties and costs from the proceeds of the sale." A.R.S. §
22 42-18059.
- 23 d. "It is unlawful for the owner, a lienholder, a conditional vendor or any other
24 person to knowingly sell or transfer personal property or remove it from its

1 location until the taxes on the property are paid.” A.R.S. § 42-19107. A person
2 who violates this section is guilty of a class 1 misdemeanor.

3 e. Further, “It is unlawful to knowingly move or sell a mobile home on which
4 applicable ad valorem taxes imposed under this chapter have not been paid
5 and are delinquent.” A.R.S. § 42-19155. A person who violates this section is
6 guilty of a class 1 misdemeanor.

7 f. Post-petition interest accrues on the MCT Claims at the statutory rate of 16%
8 per annum, or at the rate stated in a Certificate of Purchase, until the taxes
9 and interest are paid in full. A.R.S. §§ 42-18053 and 42-18153.

10 **OBJECTIONS**

11 **Post-Petition Interest:**

12 MCT objects to the Plan because it is unclear regarding the accrual of post-
13 petition statutory interest on the MCT Claims. Section 2.3 of the Plan provides for the
14 accrual of interest, but is unclear as to whether interest accrues on the MCT Claim post-
15 petition, post-confirmation or post-effective date of the Plan. As an oversecured creditor,
16 the Plan should clarify that post-petition interest accrues on the MCT Claims at the
17 statutory rate until the taxes and interest are paid in full.

18 **Lien Retention:**

19 MCT objects to the Plan because it fails to provide for retention of the tax liens on
20 the property until the taxes and interest are paid in full. Section 10.1 of the Plan
21 provides for the vesting of assets free and clear of all Claims, liens, encumbrances,
22 charges, and other interests, except as provided pursuant to the Plan, the Confirmation
23 Order, the GUC Recovery Trust Agreement, Amended and Restated Credit Facility
24 Documents, the Exit Warehouse Facilities Documents, the Exit Working Capital Facility

1 Documents, or applicable purchase agreements (Plan, p. 53, Section 10.1). The Plan
2 should provide for retention of the MCT tax liens until the taxes and interest are paid in
3 full.

4 **Objection to Sale or Transfer of Property:**

5 MCT objects to the Plan and to the sale of any property in Maricopa County to
6 the extent it fails to provide for payment of the MCT Claims first from the sale proceeds
7 in the event the property is sold, or upon transfer of the property. As stated above, the
8 tax liens are prior and superior to all other liens on the property. Further, the taxes and
9 interest are required to be paid in full from the proceeds of any sale, or upon transfer of
10 the property. The Plan should provide that the MCT Claims shall be paid in full,
11 including post-petition interest, first from the proceeds of any sale or upon transfer of the
12 property.

13 Based on the foregoing, MCT respectfully requests that the Court deny
14 confirmation of the Plan unless the Debtors further amend the Plan to, (i) provide for the
15 accrual of post-petition statutory interest, (ii) include a provision for retention of the
16 property tax liens securing the MCT Claims and any post-petition administrative tax
17 claims, and (iii) provide for payment in full, including post-petition interest, of the MCT
18 Claims first from the sale proceeds in the event the property is sold or upon transfer of
19 the property.

20 RESPECTFULLY SUBMITTED this 10th day of June, 2019.

21 WILLIAM G. MONTGOMERY
22 MARICOPA COUNTY ATTORNEY

23 BY: /s/ Peter Muthig
24 PETER MUTHIG
Deputy County Attorney
Attorney for Maricopa County Treasurer

CERTIFICATE OF SERVICE

IT IS CERTIFIED that the foregoing document was served upon the following parties as well as all parties receiving the Court's ECF service on June 10, 2019, by Electronic Notification.

John Haas
Ditech Holding Corporation
3000 Bayport Drive, Suite 985
Tampa, FL 33607

Greg M. Zipes
Benjamin J. Higgins
Office of the United States Trustee
U.S. Federal Office Building
201 Varick Street, Room 1006
New York, NY 10014

Ray C Schrock
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Email: ray.schrock@weil.com

Sunny Singh
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Email: sunny.singh@weil.com

Brian Resnick
Michelle McGreal
Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017
Email: brian.resnick@davispolk.com
Email: michelle.mcgregal@davispolk.com
Counsel to the Prepetition Administrative Agent

Patrick James Nash
John Luze
Kirkland & Ellis LLP
300 N. LaSalle
Chicago, IL 60654
Email: patrick.nash@kirkland.com
Email: john.luze@kirkland.com
Counsel to the Term Loan Ad Hoc Group

1 Mark McDermott
Sarah M. Ward
2 Melissa Tiarks
Skadden Arps Slate Meagher & Flom, LLP
3 4 Times Square
New York, NY 10036
Email: mark.mcdermott@skadden.com
4 Email: sarah.ward@skadden.com
Email: melissa.tiarks@skadden.com
5 *Counsel to the DIP Agent and DIP Lender*

6 Ben Rosenblum
Jones Day
250 Vesey Street
7 New York, NY 10281
Email: broosenblum@jonesday.com
8 *Counsel to Nomura Corporate Funding Americas, LLC*

9 Robert J. Feinstein
Bradford J. Sandler
Steven W. Golden
10 Pachulski Stang Ziehl & Jones LLP
780 Third Avenue, 34th Floor
11 New York, NY 10017-2024
Email: rfeinstein@pszyj.com
12 Email: bsandler@pszjlaw.com
Email: sgolden@pszjlaw.com
13 *Counsel to the Creditors' Committee*

14 Robert N. Michaelson
Elwood F. Collins
Rich Michaelson Magaliff Moser, LLP
15 335 Madison Avenue, 9th Floor
New York, NY 10017
16 Email: rmichaelson@r3mlaw.com
Email: ecollins@r3mlaw.com
17 *Counsel to the Creditors' Committee*

18 /s/ Peter Muthig
Peter Muthig (AZ Bar No. 018526)
19 Deputy County Attorney
MARICOPA COUNTY ATTORNEY'S OFFICE
20 CIVIL SERVICES DIVISION
222 North Central Avenue, Suite 1100
21 Phoenix, Arizona 85004-2206
Telephone (602) 506-1735
muthigk@mcao.maricopa.gov
22 *Attorneys for Maricopa County Treasurer*
23
24